

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT L. GARY,
Plaintiff,

v.

ANDREW SAUL,
UNITED STATES SOCIAL SECURITY
COMMISSION
Defendant.

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CIVIL ACTION NO. 21-CV-668

ORDER

AND NOW, this 7th day of April, 2021, upon consideration of Plaintiff Robert L. Gary's Motion to Proceed *In Forma Pauperis* (ECF No. 7), and his *pro se* Amended Complaint (ECF No. 8) it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. The Amended Complaint is **DEEMED** filed.
3. The Amended Complaint is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons in the Court's Memorandum.
4. Gary may file a second amended complaint within thirty (30) days of the date of this Order limited to a claim appealing a denial of disability benefits brought pursuant to 42 U.S.C. § 405(g). Upon the filing of a second amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.
5. The Clerk of Court is **DIRECTED** to send Gary a blank copy of the Court's form Complaint for Review of a Social Security Disability or Supplemental Security Income Decision

bearing the above-captioned civil action number. Gary may use this form to file his second amended complaint if he chooses to do so.¹

6. If Gary does not wish to amend his Amended Complaint and instead intends to stand on his Amended Complaint as originally pled, he may file a notice with the Court within thirty (30) days of the date of this Order stating that intent, at which time the Court will issue a final order dismissing the case. Any such notice should be titled “Notice to Stand on Complaint,” and shall include the civil action number for this case. *See Weber v. McGrogan*, 939 F.3d 232 (3d Cir. 2019) (“If the plaintiff does not desire to amend, he may file an appropriate notice with the district court asserting his intent to stand on the complaint, at which time an order to dismiss the action would be appropriate.” (quoting *Borelli v. City of Reading*, 532 F.2d 950, 951 n.1 (3d Cir. 1976))); *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 703-04 (3d Cir. 1996) (holding “that the district court did not abuse its discretion when it dismissed with prejudice the otherwise viable claims . . . following plaintiffs’ decision not to replead those claims” when the district court “expressly warned plaintiffs that failure to replead the remaining claims . . . would result in the dismissal of those claims”).

7. If Gary fails to file any response to this Order, the Court will conclude that Gary intends to stand on his Amended Complaint and will issue a final order dismissing this case.²

¹ This form is available on the Court’s website at <http://www.paed.uscourts.gov/documents2/forms/forms-pro-se>.

² The six-factor test announced in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (3d Cir. 1984), is inapplicable to dismissal orders based on a plaintiff’s intention to stand on his complaint. *See Weber*, 939 F.3d at 241 n.11 (treating the “stand on the complaint” doctrine as distinct from dismissals under Federal Rule of Civil Procedure 41(b) for failure to comply with a court order, which require assessment of the *Poulis* factors); *see also Elansari v. Altria*, 799 F. App’x 107, 108 n.1 (3d Cir. 2020) (per curiam). Indeed, an analysis under *Poulis* is not required when a plaintiff willfully abandons the case or makes adjudication impossible, as would be the case when a plaintiff opts not to amend his complaint, leaving the case without an operative pleading. *See Dickens v. Danberg*, 700 F. App’x 116, 118 n.2 (3d Cir. 2017) (per curiam).

See Weber, 939 F.3d at 239-40 (explaining that a plaintiff’s intent to stand on his complaint may be inferred from inaction after issuance of an order directing him to take action to cure a defective complaint).

BY THE COURT:

/s/ John R. Padova

JOHN R. PADOVA, J.

(“Where a plaintiff’s conduct clearly indicates that he willfully intends to abandon the case, or where the plaintiff’s behavior is so contumacious as to make adjudication of the case impossible, a balancing of the *Poulis* factors is not necessary.”); *Baker v. Accounts Receivables Mgmt., Inc.*, 292 F.R.D. 171, 175 (D.N.J. 2013) (“[T]he Court need not engage in an analysis of the six *Poulis* factors in cases where a party willfully abandons her case or otherwise makes adjudication of the matter impossible.” (citing cases)).